

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re: § Case No. 17-33190
§
ROSA M. VASQUEZ, §
§
Debtor(s) § Chapter 13

**OBJECTION TO CLAIM OF THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A. AS SUCCESSOR-IN-INTEREST TO ALL PERMITTED
SUCCESSORS AND ASSIGNS OF JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, AS TRUSTEE FOR SPECIALTY UNDERWRITING AND
RESIDENTIAL FINANCE TRUST MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-BC4/NATIONSTAR MORTGAGE, LLC, CLAIM NO. 4**

This is an objection to your claim. The objecting party is asking the court to disallow the claim that you filed in this bankruptcy case. You should immediately contact the objecting party to resolve the dispute. If you do not reach an agreement, you must file a response to this objection and send a copy of your response to the objecting party within 30 days after the objection was served on you. Your response must state why the objection is not valid. If you do not file a response within 30 days after the objection was served on you, your claim may be disallowed. A hearing has been set on this matter on May 31, 2018, at 2:00 P.M. in the United States Federal Bankruptcy Court, 515 Rusk St., Courtroom 400, Houston, TX, 77002.

TO THE HONORABLE CHIEF JUDGE OF SAID COURT:

COMES NOW ROSA M. VASQUEZ, and files this Objection to the claim of THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. AS SUCCESSOR-IN-INTEREST TO ALL PERMITTED SUCCESSORS AND ASSIGNS OF JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR SPECIALTY

UNDERWRITING AND RESIDENTIAL FINANCE TRUST MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-BC4/NATIONSTAR MORTGAGE, LLC ("Claimant" or "Nationstar") filed on 9/25/2017 (Claims Docket #4). Debtor would respectfully show the Court the following:

1. **Claim Information:** The claim objected to is filed as follows:

Creditor : THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. AS SUCCESSOR-IN-INTEREST TO ALL PERMITTED SUCCESSORS AND ASSIGNS OF JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR SPECIALTY UNDERWRITING AND RESIDENTIAL FINANCE TRUST MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-BC4/NATIONSTAR MORTGAGE, LLC

Claim No. : 4

Claim File Date : 9/25/2017

Claim Amount: : \$125,638.70 principal/\$33,597.79 arrears

Claim Type : SECURED

Collateral: : Homestead at 8215 Country Wind Court,
Houston, TX 77040

Legal Description:
LT 28 BLK 1
MAUNA LOA GARDENS SEC 1 AMEND

2. **Bases for Objection under 11 U.S.C. §502(b).** Debtor objects to the proof of claim for the following reasons:

I. INACCURATE ARREARS

The Debtor disputes the arrears alleged by Claimant and therefore believes that the claim, as filed, is unenforceable against her under non-bankruptcy law and under the terms of the note. Although the proposed plan provides for the arrearage claim, the Debtor believes that the loan

history is incorrectly completed and the amount of the arrears do not reflect her personal records.

First and foremost, the loan history appears to double-count the escrow deficiency. Column G of the Form 410A is titled “Prin[cipal], int[erest] & esc[row] past due balance.” This column includes all past due loan payments which include escrow deposits. The total for Column G as of the Petition Date is \$20,974.92 (See *Exhibit A*).

5/25/2017		\$ (15.00)	Property Inspection Fee	2/1/2015	\$ 20,974.92				\$ -	\$ 99,477.70	\$ -	\$ (8,971.81)	\$ 1,810.00	\$ 748.48
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The escrow deficiency column is Column O and is labeled “Escrow Balance.” As of the Petition Date, the Escrow Balance was (\$8,971.81) (See *Exhibit A*).

5/25/2017		\$ (15.00)	Property Inspection Fee	2/1/2015	\$ 20,974.92				\$ -	\$ 99,477.70	\$ -	\$ (8,971.81)	\$ 1,810.00	\$ 748.48
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That number is already included in Column G, above.

In Part 3 of Form 410A, the first line asks for the principal and interest due. This line *backs out* the escrow deficiency that is included in Column G in Part 5 of the Form 410A. In this case, the amount claimed in Part 3 is equal to the Column G total indicating that the escrow deficiency was not deducted from the Column G total (See *Exhibit A*).

Part 3: Arrearage as of Date of the Petition
Principal & interest due: \$20,974.92

Below, the third line of Part 3 asks for the Escrow Deficiency which would be the Column O total from Part 5 of the Form 410A. In Part 3, Nationstar includes the Column O total (See *Exhibit A*).

Escrow deficiency for funds advanced: \$8,971.81

This results in a “double-dipping” of the escrow deficiency and increases the arrears by just shy of \$9,000.00.

II. IMPERMISSIBLE FEES CHARGED AND REQUEST FOR PROOF OF ITEMIZED FEES, EXPENSES, AND CHARGES PURSUANT TO FED. R. BANKR. P. 3001(c)(2)(C)

Ms. Vasquez disputes the fees and charges charged to her loan. This claim has an interest in property that secures the Debtor's homestead; therefore, the Claimant is required to

attach itemized statements for fees and charges pursuant to FED. R. BANKR. P. 3001(c)(2)(C). The claim filed to date lists all fees and charges associated with the account, but fails to provide documentation proving the Claimant incurred and/or paid the alleged fees and expenses.

Additionally, there are some fees and charges that do not make sense including abnormally high late fees are charged compared to other late fees on the loan. The late fee is capped at 5% of the regular payment. Some late fees are also charged before the 15th of the month when the payment would be late pursuant to the note. (See *Exhibit A*).

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.0000 % of my overdue payment of interest, during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

7/5/2013			\$ 149.82	ZZZZF-Late Charges
7/16/2013			\$ 37.46	ZZZZF-Late Charges

In the same theme, there are months where multiple Property Inspection fees are charged to the loan and for varying amounts. In fact, the example below includes three entries for Property Inspection Fees on the same day (See *Exhibit A*).

7/8/2013			\$ 66.00	Property Inspection Fee
7/8/2013			\$ 15.00	Property Inspection Fee
7/8/2013			\$ 15.00	Property Inspection Fee

Charging multiple property inspection fees in any given month is a violation of Fannie Mae's servicing rules, specifically Part D, D2-2-10 and Part E, E-3.3-03.

Finally, and most curiously, the Form 410A includes attorney's fees for \$850.00 for performing a Motion for Relief from Stay in Ms. Vasquez's 2011 case (case number 11-40338). The fee is charged to the loan in December 2014 (See *Exhibit A*).

12/23/2014		\$ 850.00	BK/MFR Fee	7/1/2013	\$ 17,883.23			\$ -	\$ 102,884.16	\$ -	\$ (4,928.55)	\$ 1,654.46	\$ 0.00
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A review of this Court's docket in Ms. Vasquez's 2011 case shows no Motion for Relief or Motion for Entry of Agreed Order having ever been filed (See *Exhibit B*).

III. MISCALCULATED INTEREST FOR TOTAL DEBT CALCULATION

The Debtor asserts the interest calculated for this claim is incorrect. The Part 2 of the Form 410A states that the interest due is \$16,127.65 (See *Exhibit A*).

Interest due: \$16,127.65

If the Principal Interest and Escrow due (Column G) equals \$20,974.92, and of that number, \$8,971.81 is an escrow deficiency (Column O) then the true Principal and Interest Due amount is \$12,000.11¹ which is less than Part 2 says is due for interest alone. Ms. Vasquez believes that the interest due is inaccurate.

IV. VIOLATION OF THE TRUTH IN LENDING ACT (REGULATION Z)

Nationstar has violated the Truth in Lending Act as implemented by Regulation Z (Reg Z). The Form 410A shows that Nationstar periodically held a suspense balance greater than one month's regular payment and failed to properly apply that payment in accordance with Reg Z (See *Exhibit A*).

10/1/2013	\$ 993.51		Monthly Mortgage Payment Due	4/1/2012	\$ 18,797.14				\$ -	\$ 105,328.47	\$ -	\$ (1,721.17)	\$ 938.28	\$1,281.75
10/6/2013		\$ 2,928.72	PMT-MISC SUSP	4/1/2012	\$ 18,797.14	\$ -	\$ -	\$ -	\$ 2,928.72	\$ 105,328.47	\$ -	\$ (1,721.17)	\$ 938.28	\$4,210.47
10/15/2013		\$ (1,978.58)	MISC ADJ	4/1/2012	\$ 18,797.14	\$ -	\$ -	\$ -	\$ (1,978.58)	\$ 105,328.47	\$ -	\$ (1,721.17)	\$ 938.28	\$2,231.89
10/15/2013		\$ 989.29	PAYMENT	5/1/2012	\$ 17,807.85	\$ 156.04	\$ 582.47	\$ 240.18	\$ (0.00)	\$ 105,171.83	\$ -	\$ (1,480.99)	\$ 938.28	\$2,231.89
10/15/2013		\$ 989.29	PAYMENT	6/1/2012	\$ 16,818.56	\$ 157.52	\$ 591.59	\$ 240.18	\$ (0.00)	\$ 105,014.31	\$ -	\$ (1,240.81)	\$ 938.28	\$2,231.89
11/1/2013	\$ 993.51		Monthly Mortgage Payment Due	6/1/2012	\$ 17,812.07				\$ -	\$ 105,014.31	\$ -	\$ (1,240.81)	\$ 938.28	\$2,231.89
11/5/2013		\$ 16.00	Record NOD	6/1/2012	\$ 17,812.07				\$ -	\$ 105,014.31	\$ -	\$ (1,240.81)	\$ 954.28	\$2,231.89
11/8/2013		\$ 993.52	PMT-MISC SUSP	6/1/2012	\$ 17,812.07	\$ -	\$ -	\$ -	\$ 993.52	\$ 105,014.31	\$ -	\$ (1,240.81)	\$ 954.28	\$3,225.41
11/13/2013		\$ (989.29)	MISC ADJ	6/1/2012	\$ 17,812.07	\$ -	\$ -	\$ -	\$ (989.29)	\$ 105,014.31	\$ -	\$ (1,240.81)	\$ 954.28	\$2,236.12
11/13/2013		\$ 989.29	PAYMENT	7/1/2012	\$ 16,822.78	\$ 158.40	\$ 590.71	\$ 240.18	\$ (0.00)	\$ 104,855.91	\$ -	\$ (1,000.63)	\$ 954.28	\$2,236.12
11/20/2013		\$ 993.52	PMT-MISC SUSP	7/1/2012	\$ 16,822.78	\$ -	\$ -	\$ -	\$ 993.52	\$ 104,855.91	\$ -	\$ (1,000.63)	\$ 954.28	\$3,229.64
11/22/2013		\$ (989.28)	MISC ADJ	7/1/2012	\$ 16,822.78	\$ -	\$ -	\$ -	\$ (989.28)	\$ 104,855.91	\$ -	\$ (1,000.63)	\$ 954.28	\$2,240.36
11/22/2013		\$ 989.28	PAYMENT	8/1/2012	\$ 15,833.50	\$ 159.29	\$ 589.81	\$ 240.18	\$ (0.00)	\$ 104,696.62	\$ -	\$ (780.45)	\$ 954.28	\$2,240.36
11/29/2013		\$ 993.52	PMT-MISC SUSP	8/1/2012	\$ 15,833.50	\$ -	\$ -	\$ -	\$ 993.52	\$ 104,696.62	\$ -	\$ (780.45)	\$ 954.28	\$3,233.88
11/30/2013		\$ (989.26)	MISC ADJ	8/1/2012	\$ 15,833.50	\$ -	\$ -	\$ -	\$ (989.26)	\$ 104,696.62	\$ -	\$ (780.45)	\$ 954.28	\$2,244.60
11/30/2013		\$ 989.28	PAYMENT	9/1/2012	\$ 14,844.22	\$ 160.18	\$ 588.92	\$ 240.18	\$ (0.00)	\$ 104,536.44	\$ -	\$ (520.27)	\$ 954.28	\$2,244.60
12/1/2013	\$ 993.51		Monthly Mortgage Payment Due	9/1/2012	\$ 15,837.73				\$ -	\$ 104,536.44	\$ -	\$ (520.27)	\$ 954.28	\$2,244.60
12/2/2013		\$ 993.52	PMT-MISC SUSP	9/1/2012	\$ 15,837.73	\$ -	\$ -	\$ -	\$ 993.52	\$ 104,536.44	\$ -	\$ (520.27)	\$ 954.28	\$3,238.12
12/3/2013		\$ (989.28)	MISC ADJ	9/1/2012	\$ 15,837.73	\$ -	\$ -	\$ -	\$ (989.28)	\$ 104,536.44	\$ -	\$ (520.27)	\$ 954.28	\$2,248.84

The above segment from the Form 410A shows an approximately three month period where the suspense account balance is consistently higher than two months payments while the loan remains delinquent. This causes interest to accrue unnecessarily and is a violation of 12 CFR §1026.36(c)(1)(i).

V. ATTORNEY'S FEES AND DAMAGES

The Proof of Claim filed by Nationstar fails to comply with Fed. R. Bankr. P. 3001. The loan history (Form 410A) is inaccurately completed; there is no itemization of fees nor is there

¹ This is not an admission that the numbers on the Form 410A are accurate but only meant to illustrate that if they are, then other numbers in the same form are inaccurate.

supporting documentation for the fees charged. Further, Ms. Vasquez seeks actual and statutory damages for Nationstar's violation of the Truth in Lending Act including reasonable attorney's fees.

WHEREFORE, Ms. Vasquez prays this court disallows the secured claim of THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. AS SUCCESSOR-IN-INTEREST TO ALL PERMITTED SUCCESSORS AND ASSIGNS OF JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR SPECIALTY UNDERWRITING AND RESIDENTIAL FINANCE TRUST MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-BC4/NATIONSTAR MORTGAGE, LLC, CLAIM NO. 4, as currently filed, including additional fees and expenses that have not been proven and any amendments thereon to prove these fees and expenses pursuant to this court's authority under FED R. BANKR. P. 3001(c)(2)(D)(i), and grants them such other and further relief, at law or in equity, to which they may be justly entitled, including attorney fees pursuant to FED. R. BANKR. P. 3001(c)(2)(D)(ii). Ms. Vasquez also prays for an award of actual damages, statutory damages, and reasonable attorney's fees for violations of the Truth in Lending Act.

Respectfully Submitted,

THE POLNICK LAW FIRM, PLLC

/s/Veronica A. Polnick

Veronica A. Polnick

TBN: 24079148

SDTX: 1321826

2311 Canal St., Suite 326

Houston, Texas 77003

832.533.2603 (tel)

832.504.9489 (fax)

Veronica.polnick@polnicklaw.com

ATTORNEY FOR ROSA VASQUEZ

CERTIFICATE OF SERVICE

I certify that on this date a true and correct copy of this **OBJECTION TO CLAIM OF THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. AS SUCCESSOR-IN-INTEREST TO ALL PERMITTED SUCCESSORS AND ASSIGNS OF JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR SPECIALTY UNDERWRITING AND RESIDENTIAL FINANCE TRUST MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-BC4/NATIONSTAR MORTGAGE, LLC** was served by regular U.S. Mail, postage prepaid and/or by electronic or facsimile transmission on the following:

VIA ECF:

William Austin Barsalou on behalf of Creditor Mauna Loa Gardens I HOA
abarsalou@barsalou.com

William E. Heitkamp
heitkamp@ch13hou.com

William E. Heitkamp on behalf of Trustee William E. Heitkamp
heitkamp@ch13hou.com

US Trustee
USTPRegion07.HU.ECF@USDOJ.GOV

Carlos Hernandez Vivoni on behalf of Creditor U.S. BANK NATIONAL ASSOCIATION
carlos.hernandez-vivoni@bonialpc.com

VIA FIRST CLASS MAIL:

Nationstar Mortgage
P.O. Box 619096
Dallas, TX 75261-9741

Date: April 10, 2018

Respectfully Submitted,

/s/Veronica A. Polnick
Veronica A. Polnick